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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,669	09/20/2000	Thomas G. Woolston	99892	5562
20985	7590	05/21/2004	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			SAGER, MARK ALAN	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/665,669	<b>Applicant(s)</b> WOOLSTON, THOMAS G.	
	<b>Examiner</b> M. A. Sager	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-69, 71-79, 81, 82 and 84-106 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-69, 71-73, 81, 82 and 84-99 is/are allowed.
- 6) ☒ Claim(s) 74-79, 100-106 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Objections***

1. Claim 74-79 is objected to because of the following informalities: dependent upon canceled claim 70. Claims examined as to depending upon claim 71. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. Claim 74-79 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Essentially, it is unclear as to scope of cited claim due to dependency upon cancel claim 70. For examination only, cited claim is examined as depending upon claim 71 if now claiming 70.

***Claim Rejections - 35 USC § 102***

3. Claim 100-104, 106 is rejected under 35 U.S.C. 102(e) as being anticipated by Rosenberg (6028593) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rosenberg in view of discloses a method and apparatus teaching a display device (20), a handle (6:40-63, ref. 34), a controller (12), as particularly claimed. Sporting simulation or sporting environment such as fencing for using a sword in a sporting simulation or environment is deemed consistent with Rosenberg's disclosure (6:18-48:50, esp. 6:30-67, 15:61, 18:49-19:50, 20:30-48:50) for a simulated sword battle, as broadly claimed. Further, Rosenberg's sword hilt (6:62-63) as being a handle anticipates at least sword hilt as claimed.

Alternatively, although Rosenberg discloses a hand held user object (e.g. handle) being a sword hilt (6:62-63) or other object (6:40-43) in a simulated or sporting environment, Rosenberg is not clear as to their use in a sword battle. However, it was well known in gaming to permit

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simulated sword battle for combat simulation at a time prior to the invention. Walton discloses a system with game playing using weapons such as sword or dagger or revolver in a simulated sporting environment or sword battle, 'Touché, En Garde', (6:21-39, 12:13-31, figs. 1, 6, 13, 22) so as to play entertaining games with user while at same time provides exercise and physical simulation (2:65-3:63). Therefore, it would have been obvious to an artisan at a time prior to the invention to add simulated sword battle or gun or knife as well known or as taught/suggested by Walton to Rosenberg's method and apparatus so as to play entertaining games with user while at same time provides exercise and physical simulation (2:65-3:1, 36-38).

With regard to claim 105, Rosenberg or Rosenberg in view of Walton discloses a method and apparatus teaching claimed steps/features including other than hilt of a sword for weapons such as mace, spear, staff or other combat or activities (supra) for Rosenberg that is at least equivalent to knife, hammer or axe for simulating bash or thrust weapon activities or revolver for Walton for simulating gun each in use of handle in a simulated sport environment.

Further, regarding gun, bazooka, knife, hammer or axe, the examiner notes equivalence of claim 103 or 104 to claim 105 and 106. The difference between these steps/features and that, which is clearly taught, by Rosenberg or Rosenberg in view of Walton lie in the particular weapon type provided. As these features/steps are variations of providing weapon types as are known, such would have been obvious to one of ordinary skill in the art in implementation of Rosenberg or Rosenberg in view of Walton. Absent criticality, specific weapon type falls within the realm of choice by game designers, when implementing a particular weapon type onto Rosenberg's method and apparatus or Rosenberg's method and apparatus in view of Walton. The lack of criticality of the specific recitations in the claims is evidenced by Applicant's

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disclosure or within the art of gaming for simulating various weapon types including melee or range forms of combat that further teaches these variations to be equivalent choices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add bazooka, gun, knife, hammer or axe as an equivalent weapon type to Rosenberg's method and apparatus or Rosenberg's method and apparatus in view of Walton in order to add variety of weapon type for melee or range combat or so as to play entertaining games with user while at same time provides exercise and physical simulation (2:65-3:1, 36-38). Alternatively, it would have been obvious to an artisan at a time prior to the invention to add bazooka, gun, knife, hammer or axe as known weapon types to Rosenberg or Rosenberg's method and apparatus in view of Walton to provide variety of weapon types which increases user enjoyment thereby and increased revenue therefrom. Essentially, bazooka, battleaxe or war hammer weapon types were known in gaming or real life battle. The simulation of such weapon types permits players to enact their use in simulated play. It is noted that sword, gun, knife, and bazooka were each present in Africa campaign of World War II and simulation of such weapons permits enactment in such a scenario which increase play by gamers of historical interest; while, sword, gun, hammer, knife and axe were known in use spanning the entire globe ranging from Eastern and Western Hemispheres that similarly may increase play by gamers of historical interest.

***Allowable Subject Matter***

4. Claim 20-69, 71-73, 81-82, 84-99 is allowed.
1. Claim 74-79 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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***Response to Arguments***

6. Applicant's arguments with respect to claim 74-79, 100-106 have been considered but are moot in view of the new ground(s) of rejection. Essentially, the examiner has reconsidered breadth of invention for cited claims.

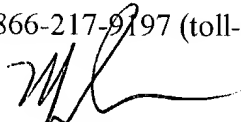
***Conclusion***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 703-308-0785. The examiner can normally be reached on T-F, 0700-1700 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
M/A. Sager  
Primary Examiner  
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MAS